

JUDGE SPRECHER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

05 CV 5677

-----x
FRANCISCO CHIUZA,

Plaintiff,

COMPLAINT

-against-

SECOND PRESBYTERIAN CHURCH,

Defendant.

-----x

Francisco Chiuza, by his attorneys Wiseman & Hoffman, for his complaint against defendant Second Presbyterian Church alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 2101(b).
2. This Court also has supplemental jurisdiction over the plaintiff's pendant state claims arising under New York Labor Law §190 et seq. and §650 et seq. in that the claims share a common nucleus of operative facts with the federal claim.
3. Venue is proper pursuant to 28 U.S.C. § 1331(b), as all of the events and omissions giving rise to this claim occurred with this district.

PARTIES

4. Plaintiff Francisco Chiuza (hereinafter "Chiuza") is an individual residing 327 Edgecombe Avenue, Apartment No. 1, New York, New York 10031.
5. Defendant Second Presbyterian Church (hereinafter "Defendant" or the "Church") is, upon information and belief, a not-for-profit religious institution with a primary office located at 3 West 96th Street, New York, New York.

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6. Defendant is an "employer" within the meaning of 29 U.S.C. § 203(d) and New York Labor Law §§ 190 and 650.

FACTS

7. In July 1990 Chiuza was hired by Defendant to work as a handyman and to perform such services as general maintenance and cleaning, plumbing and electrical work and other related janitorial duties at the Church's sanctuary, office and an adjacent school located on the Upper West Side of Manhattan.

8. From July 1990 until his resignation on or about January 10, 2005, Chiuza worked a regular schedule consisting of Monday to Friday from 5:00 p.m. to 10:00 p.m.; on Saturdays from 8:00 a.m. to 5:00 p.m. and on Sundays from 9:00 a.m. to 6:00 p.m., consisting of a total number of 43 hours of work per week.

9. In renumeration for such services, Defendant provided Chiuza with the use of a one bedroom apartment at a residential building owned by the church located at 360 Central Park West, New York, New York, but did *not* pay *any* other wage or compensation to Chiuza for such services.

FIRST CAUSE OF ACTION
MINIMUM WAGE CLAIM UNDER 29 U.S.C. §206

10. Pursuant to 29 U.S.C. §206(a) Defendant was required to pay Chiuza at the minimum hourly wage then in effect for all hours worked on its behalf.

11. Defendant wilfully and intentionally failed to pay Chiuza the minimum wages due to him under 29 U.S.C. § 206(a) for the work he performed for Defendant during the entire period of his employment.

12. Defendant is thus liable to Chiuza for unpaid minimum wages owed to him during the entire period of his employment in an amount to be determined at trial

together with statutory costs, interest, liquidated damages pursuant to 29 U.S.C. §216(b) and reimbursement of Chiuza's attorneys fees incurred in this action.

SECOND CLAIM FOR RELIEF
NEW YORK STATE MINIMUM WAGE AND OVERTIME PAY

13. Chiuza realleges and incorporates by reference paragraphs 1 through 12 above.

14. Defendant's failure to pay Chiuza the minimum wage required by law violates New York Labor Laws §190 et seq. and §650 (McKinney's 2000) and New York State Department of Labor Regulations.

15. Defendant willfully violated the New York Labor Law §190 et seq. and §650 et seq. (McKinney's 2000).

16. Chiuza is therefore entitle to an award of damages against Defendant together with liquidated damages and interest, for failure to pay minimum wages in an amount to be determined at trial together with reimbursement of Chiuza's attorneys fees incurred in this action.

JURY DEMAND

17. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Chiuza respectfully requests that this Court:

a. On plaintiff's first cause of action, award damages, liquidated damages and interest against defendant Second Presbyterian Church in amount to be determined at trial.

b. On plaintiff's second cause of action, award damages, liquidated damages and interest against defendant Second Presbyterian Church in an amount to be determined at trial.

c. Award attorneys' fees and costs to plaintiff against Defendant pursuant to 29 U.S.C. §216(b) and N.Y. Labor Law §216(b) and N.Y. Labor Law §198 and 663(a) (McKinney's 2000);

d. Grant such additional and further relief as the Court deems just and proper.

Dated: June 15, 2005
New York, New York

Respectfully Submitted,

WISEMAN & HOFFMANN

By: 
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